IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Arbitration Petition No.15 of 2006

M/s.Haware Engineers & Builders
Pvt.Ltd. Petitioner
Vs.
Smt.Munira Begum Mohd. Yusuf Mukri Respondent

Mr.Akhilesh Dubey i/b. M/s.M.Tripathi & Co. for petitioner.
Mr.R.R.Mishra for respondent.

CORAM: B.H.MARLAPALLE ,J.
July 21, 2006.

P.C.

. Heard Mr.Dubey, the learned counsel for the petitioner and Mr.R.R.Mishra, the learned counsel for the respondent.

. The parties entered into a development agreement on 20/5/2002 and Clause 38 thereunder deals with the remedy of arbitration under the Arbitration and Conciliation Act, 1996. It is claimed that in the said development agreement it was provided under clause 3 that if the area allotted was less than or more than 4000 sq.mtrs., the amount of consideration shall be proportionately increased or decreased at the rate of Rs.1500/- per sq.mtr. The petitioner claims that the disputes have arisen on the said agreement which calls for settlement by arbitration

and relies upon clause 70 in the said agreement. The said clause provides for a sole arbitrator to be appointed for settling the disputes between the parties. The total claim made by the petitioner is Rs.3,32,616/-.

. The respondent has filed affidavit-in-reply and opposed the arbitration petition.

. It has been more particularly stated that the petitioner has initiated separate legal proceedings and some of these proceedings were concerning the enforcement of the very same agreement which has been relied upon by the petitioner in this petition. It has been more particularly pointed out that Civil Suit No.44 of 2005 was filed on 30/3/2005 praying for specific performance of the said agreement dated 20/5/2002 but the suit came to be withdrawn on 16th April 2005. Similarly Misc. Application No.253 of 2005 was filed under Section 9 of the Act and it was withdrawn on 24/1/2006. Special Civil Suit No.35 of 2006 has been filed in the Court of the learned Civil Judge, Senior Division at Thane. Misc.Application No.253 of 2005 came to be disposed as withdrawn solely for the reasons that the learned Civil Judge,

Senior Division at Panvel was not competent to entertain such an application. Similarly Civil Suit No.44 of 2005 has been withdrawn on 16/4/2005.

. These pending proceedings do not in any way decide the issue raised by the petitioner regarding the right to recover certain amounts from the respondent. There is no other pending litigation between the parties as at present except Misc. Application No.6 of 2006 which appears to be an application under Section 9 of the Act and the pendency of such an application would not affect the remedy of arbitration within the meaning of clause 70 of the agreement dated 20/5/2002. As per the said clause both the parties agreed to refer the disputes arising from the agreement to arbitration under the Act. The objection is, therefore, overruled.

. Both the parties have agreed on the name of Hon'ble Mr.Justice S.M.Jhunjhunuwala (Retd.) for being appointed as the sole arbitrator and hence this application is allowed by appointing Hon'ble Mr.Justice S.M.Jhunjhunuwala (Retd.) as the sole arbitrator. Parties to appear before the learned Arbitrator within a period of three weeks from today.

. A copy of this order be forwarded to Hon'ble Mr.Justice S.M. Jhunjhunuwala (Retd.)

(B.H.MARLAPALLE,J.)